TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 64

CLYDE HYSLER, PETITIONER,

vs.

THE STATE OF FLORIDA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED MAY 1, 1941.

CERTIORARI GRANTED JUNE 2, 1941.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Caption omitted]

[fol. 2] **IN SUPREME COURT OF FLORIDA**

CLYDE HYSLER, Plaintiff-in-Error,

vs.

STATE OF FLORIDA, Defendant-in-Error

PETITION FOR PERMISSION TO APPLY TO THE CIRCUIT COURT, DUVAL COUNTY, FLORIDA, FOR WRIT OF ERROR CORAM NOBIS —Filed April 10, 1941

To the Honorable Justices of Said Court:

Comes now the above named Plaintiff-in-error, Clyde Hysler by his attorney, P. Guy Crews, and respectfully shows unto the Court that on the 15th day of January, A. D. 1937 the said Plaintiff-in-error, Clyde Hysler was indicted by a grand jury of Duval County, Florida, upon a charge of murder in the first degree; that on the 15th day of March, A. D. 1937 the defendant entered a plea of not guilty, and on said date the Court proceeded to trial of said cause which resulted in the verdict of "guilty" without recommendation of mercy on the 5th day of April, A. D. 1937. On the 23rd day of April, A. D., 1937 the Judge of said Circuit Court of Duval County, Florida sentenced the Plaintiff-in-error to be electrocuted; and that thereafter and at the time prescribed by law, the plaintiff-in-error filed his Motion for New Trial, which said motion was overruled by the Judge of the said Circuit Court, and the plaintiff-in-error was allowed ninety days in which to prepare and present his Bill of Exceptions; and that within the time allowed the Defendant did prepare and present his Bill of Exceptions; and that thereafter, to-wit: That within due time on the 24th day of April, A. D. 1937, the plaintiff-in-error sued out a writ of error to this Honorable Court and the said cause was finally determined [fol. 3] by this Honorable Court on the 3rd. day of February, A. D., 1938. This Honorable Court sustaining the conviction, judgment and sentence of the said Circuit Court in and for Duval County, Florida, and afterwards, and within thirty (30) days of the rendition of the judgment in this Honorable Court, Plaintiff-in-error filed his application for a rehearing in said cause which petition for rehearing was denied by this Honorable Court on the 3rd day of June, A. D. 1938.

2nd

This Plaintiff-in-error, now and hereby moves this Honorable Court that he be granted by this Honorable Court the right and privilege of applying to the Honorable Bayard B. Shields, one of the judges of the Circuit Court of Duval County, Florida, said judge being the trial judge in said cause and before whom petitioner was tried and convicted, for a writ of error coram nobis; and in this connection respectfully shows unto the Court that there are certain facts and evidence in existence at the time of said trial and conviction which were unknown to him and also unknown to his attorneys, and which have come to his knowledge long subsequent to his trial, conviction and sentence, and long after the expiration of the time within which he could make his motion for a new trial, and which facts if known to the court at the time of his conviction and sentence would have caused the court to have entered up a different judgment in said cause, to-wit; a judgment in favor of the defendant, and this plaintiff-in-error is advised that if such matters could have been presented to the court during the trial of said cause the sentence and judgment of the court would not have been entered.

3rd

The plaintiff-in-error further respectfully shows unto the court that none of the said matters and things in the last paragraph above referred to could have been known by him or his attorneys, by the exercise by all reasonable diligence because the defendant says that both he and his attorneys exercised all reasonable care and diligence in an attempt to ascertain all matters of fact in relation to his said cause from the time of his arrest up and until and including the present time.

[fol. 4]

4th

That the aforesaid facts, acts and procedure hereinafter and heretofore referred to, that the two (2) witnesses, to-wit; Alvin Tyler and James Baker who were co-defendants of the petitioner, Clyde Hysler, and upon whose testimony the State of Florida relied upon for a conviction of petitioner was coerced, intimidated, beaten, threatened with violence and otherwise abused and mistreated in order to compel the said witnesses, Tyler and Baker to give testimony at the trial of said cause against petitioner and to implicate said petitioner in the killing of Mrs. Mamie Surrency; and

further that the said witnesses, Tyler and Baker were promised immunity from the electric chair, by John W. Harrell and further promised if they would implicate Clyde Hysler in said murder and testify against him during the trial of said cause that he as State's Attorney of the Fourth Judicial Circuit of Florida together with other law enforcing officers of Duval County, Florida would see that he did not get the chair, and that they would procure a pardon and have him released from the State Penitentiary after serving three (3) years of his sentence, all of which is more particularly described by reference to a statement and affidavit made by the said James Baker on the 7th day of April, A. D. 1941, also by further affidavit and statement made by the said James Baker on the 8th day of April, A. D. 1941, and also by statement and affidavit made by the said James Baker on the 9th day of April, A. D. 1941, said affidavit being marked "A-b and c" respectively and hereby made a part of this petition as fully as though set out herein in haec verba. And for further reason that said affidavits show that the said petitioner was not implicated in the murder of the said Mrs. Mamie Surrency but that one Joe Peterson, Sr. was the person implicated in said murder and not the petitioner, Clyde Hysler, all of which is set out herein more fully in the affidavits herein above referred to and further substantiated by photostatic copies of the following affidavits, to-wit; affidavit of one Ed. Mosley; affidavit of one A. J. Mooney; affidavit of one Mrs. Ruby Crews and affidavit of one Rudolph J. Dowling, said photostatic copies being marked "d-e-f and g" respectively, and each of said affi- [fol. 5] davits being hereto attached and hereby made a part of this petition as fully as though set out herein in haec verba.

5th

That the said witnesses, Alvin Tyler and James Baker immediately after and following their arrest were held incommunicado for a long period of time without being allowed the benefit and advice of counsel, without being allowed to see or confer with their friends or relatives and without being allowed to confer with the attorneys for the petitioner; that said witnesses, Tyler and Baker were removed from the Duval County Jail and confined in the State Penitentiary at Raiford, Florida with instruc-

tions to allow no one to communicate with them for a long period of time immediately following their arrest, and it became necessary for the attorneys for petitioner to procure an order of the Circuit Court of Duval County for permission to confer with said witnesses several weeks after their arrest, and then only in company with, and in the presence of the attorneys appointed by the Court to represent said witnesses and said attorneys for petitioners made diligent effort to ascertain from said witnesses facts about which they would testify to in trial of said petitioner, and thereby used diligent effort in trying to procure the information as set out herein by the respective affidavits by the witness, James Baker, but said witness Baker was afraid to divulge the truth to the attorneys for the petitioner as set out herein in the said affidavits, a-b and c hereto attached, and that said petitioner was denied a fair and impartial trial by reason of the coercion and intimidation of the witnesses, Alvin Tyler and James Baker and the hope of reward promised them as hereinabove set forth, and has by reason thereof denied equal protection of the law as guaranteed to him by the 14th Amendment to the United States Constitution and was thereby denied due process of the law as guaranteed by the 5th Amendment of the United States Constitution.

6th

That had the said witnesses, Tyler and Baker not been intimidated, coerced and promised immunity from the electric chair by the law enforcement officers in Duval County as described in affidavits "a-b and c" hereto attached, and by John W. Harrell as herein above described, and [fol. 6] the said witnesses had been left free to testify and tell the truth as to the said Joe Peterson, Sr. being the person involved in the murder of the said Mrs. Mamie Surrency instead of the petitioner, said testimony would have prevented the rendition of the judgment, verdict and sentence of petitioner in this cause, and if another trial be had of this cause, this petitioner would be acquitted.

6-A

Petitioner attaches hereto affidavit of James Baker in his own handwriting marked Exhibit "I" and hereby

makes it a part of this petition as fully as though set out herein in haec verba.

7th

That in further support of said witnesses, Tyler and Baker being held incommunicado and being not allowed to confer with their friends or relatives, petitioner has hereto attached affidavit from Joe Sears, Jr. Esquire and H. L. Anderson, Esquire, attorneys who represented petitioner during trial of said cause, said affidavits being marked "h", said affidavits being hereby made a part of this petition as fully as though set out herein haec verba.

8th

That petitioner further alleges that the affidavits of the witness, James Baker, being affidavits hereto attached and marked "a-b and c" and made by the said James Baker freely and voluntarily on his part and without any suggestion or prompting on the part of petitioner or any one on his behalf, and that the statements contained in said affidavits were made in the presence of several prison officials at Raiford, Florida after said James Baker made a voluntarily request to see and talk with the attorney for petitioner.

9th

That in carrying out the mandate of this Honorable Court the Governor of the State of Florida has duly signed a death warrant which provides for and fixes the date for the execution of petitioner during the week beginning April 14th, A. D. 1941, wherefore the aforesaid, Clyde Hysler moves this Honorable Court for leave to file a petition for writ of error coram nobis in the Circuit Court [fols. 7-8] in and for Duval County, Florida and that the judgment and sentence heretofore entered in the said cause be stayed until the Circuit Court in and for Duval County, Florida has disposed of the petition for writ of error coram nobis.

(Signed) Clyde Hysler, Plaintiff-in-Error.

(Signed) P. Guy Crews, Attorney for Petitioner.

Duly sworn to by Clyde Hysler and P. Guy Crews. Jurats omitted in printing.

[fol. 9] EXHIBIT "A" TO PETITION

Raiford, Florida.

Conference held with James Baker in the Flat Top Court Yard at the State Prison Farm, Raiford, Florida Monday, April 7th. A. D. 1941 between 5:00 and 6:00 o'clock P. M.

Personally appeared before me an officer duly authorized to administer oaths and take acknowledgments, James Baker, who, after being first duly sworn, deposes and says:

That after the killing of Mr. and Mrs. Surrancy near Grand Crossing in Jacksonville, Florida on the 23rd day of November 1936, that he and Alvin Tyler, the man who was with him at the time of the said killing agreed between them while they were in Cracker Swamp in the Marietta section of Duval County, that they would lay the blame of the planning of the robbery of the Surrancys upon Clyde Hysler because they had had considerable liquor dealings with Clyde Hysler and knew him well, and for the reason that the Hyslers bore a bad reputation in Duval County, and for the further reason that Clyde Hysler's father had plenty of money and they thought that by laying the planning of the robbery of the Surrancys on Clyde Hysler that his father and his other relatives would put up sufficient money to get Clyde Hysler out of the trouble and that by laying it on to Clyde Hysler that he, James Baker and Alvin Tyler would escape the death penalty, that in truth and fact, that Clyde Hysler was not implicated in the planning of the robbery and had nothing to do with the killing of Mr. and Mrs. Surrancy, but that one Joe Peterson, Sr. was the man who planned the robbery and hired the said James Baker and Alvin Tyler to perform the robbery after being advised by the said Joe Peterson that it would be no trouble, and that Mr. Surrancy did not carry a gun, and all they would have to do would be to point the pistol at him and take the money, that affiant further deposes and says:

That Clyde Hysler was in no way responsible for the attempted robbery of Mr. and Mrs. Surrancy; that he had nothing to do with it, and the man who planned the robbery and was supposed to protect us in the robbery was Joe Peterson and not Clyde Hysler; that Joe Peterson was [fol. 10] in the immediate vicinity when the attempted robbery and the killing of the Surrancys took place, and had it not been that Joe Peterson planned the robbery and

hired Alvin Tyler and myself to rob Mr. Surraney they would probably have still been living and we would not be in any trouble.

James Baker Questioned.

By Mr. Crews:

Q. Baker what kind of a looking man was Joe Peterson, Sr.?

A. He is a man about 5 feet and 7 or 8 inches tall, weigh around 195 to 200 pounds, kinda red skin and short neck and mostly wore a cap.

Q. How long had you known Joe Peterson before this——

A. Since 1925, I had no dealing with him then, I started dealing with him in 1936.

Q. What kind of dealings did you have with him?

A. Bought whiskey from him once in awhile.

Q. Where had you started working when you starting buying whisky from him?

A. I wasn't working any where when I started buying whisky from him.

Q. Was you ever in his home?

A. Yes, sir.

Q. Did you ever eat in his home?

A. Yes, sir, not at his table, you know about where I ate.

Q. Where did Joe Peterson first mention the robbery of Mr. Surraney to you?

A. At Lennox and Edgewood.

Q. There in Jacksonville, Florida?

A. Yes, Sir.

Q. What did he tell you, the best you can remember?

A. He asked me where was I working at the time, and I told him no place I was selling a little bolita and he said, you can't make no money at that, and I told him that was the best I can do right away, I was just out of the hospital and I was behind in my room rent, and he asked me did I want to borrow some money, I told him yes but I don't have no way right now to pay you back, he said that was [fol. 11] alright that he would let me have it, he gave me $10.00, a few days later I was back out there in the same place selling bolita at Lennox and Edgewood and he asked me if I wanted to make some money, and I told him yes, he said I got a little job for you, and I asked him was he ready for me to start on this little job now, and he said no, that

he would let me know in a few days, when he asked me about going out to rob these people I told him no that I couldn't do that, and he says that you have got to pay me my money, I told him that I have got to go see my brother and get it from him, he said he didn't want it like that, said that I was poor and didn't have nothing and he was going to give me a chance to pay him his money and make some for myself, and after that he started threatening me and following me down, and had a man, I don't know who he was, to follow, you know a trailer—Alvin Tyler used to work for him——

Q. You mean Alvin Tyler used to work for Joe Peterson?

A. Yes, sir, the law knows that, Alvin Tyler used to run a house and sell all of Mr. Joe's liquor down on Orange Street, he and a man named C. W.

Q. Was C. W. a white man?

A. No, sir, colored—but I never would promise him that I would go with Tyler to do this until he got mad and struck me over the eye, "You see this scar" (indicating) over my left eye, and I got scared and told him that I would go with Alvin Tyler, I was afraid that he would kill me or have me killed cause I know he had killed a man.

Q. Now Baker, I don't want you to tell me anything except the truth, I want you to tell me if Joe Peterson was the man that got you into all of this instead of Clyde Hysler.

A. Yes, sir, he is the man.

Q. Then you and Alvin Tyler planned to lay this all on Clyde Hysler in order to try to get out of it yourself or to get a life sentence instead of the chair?

A. Yes, sir.

Q. How long has it been since you have seen Clyde Hysler last past?

A. I haven't seen him since his last trial in 1937.

[fol. 12] Q. Was that in Jacksonville?

A. Yes, sir.

Q. When was you removed from the Duval County Jail to Raiford?

A. I was brought down here this afternoon.

Q. Who brought you down here?

A. Mr. Gene Griffen, Mr. Dick Barker and another man by the name of Mr. Buck, he is a city fireman, he is a little chunky man and a mighty fine man.

Q. Have you talked to or been talked to by Mr. Clyde Hysler or any of his relatives since the last trial of Clyde Hysler in 1937?

A. No, sir, I haven't seen or talked to any of them or seen Mr. Clyde since the last trial, I can prove it by all of the jailers down there, and the night crew too.

Q. You say down there, you mean the Duval County Jail?

A. Yes, sir.

Q. Has any of the Hyslers or any one else promised you anything for making this statement?

A. No, sir, I haven't seen any of them.

Q. Baker, you know who I am, I am P. Guy Crews, Attorney in Jacksonville and I presented Clyde Hysler's petition to the Pardon Board to have his sentence commuted from death to life imprisonment, have I talked to you or had any conference at any time since you were first arrested in this case for the murder of Mr. and Mrs. Surrancy?

A. I a-nt never talked to you until last Saturday afternoon when you came to the jail to see Cornelius Purdy and I saw you there while your was talking to Cornelius Purdy and I told you I wanted to talk to you cause I knew you was Mr. Clyde's Lawyer.

Q. You are making these statements and this affidavit of your own free will and accord without any hope or reward or fear of punishment, and without any intimidation and realizing that you are likely to die next week?

A. Yes, sir, but that is the truth.

Q. Do you say that all the statements you have made in here is the truth and nothing but the truth?

A. Yes, sir.

Q. Since you and Tyler escaped jail have you ever heard from Tyler?

A. Twice.

[fol. 13] Q. How did you hear from him? How long after he got out of jail?

A. First time was six or eight months after he was gone.

Q. After he was gone?

A. Yes, sir. I heard from him the middle of 1939, the 4th of July 1939, I heard from him. I could send you to two people right now who saw him, if they knew who you was——

Q. You want care to mention their names?

A. No, sir.

Q. Baker did you know a woman by the name of Miss Ruby who was a girl friend of Mr. Petersons who later married a man by the name of Crews?

A. Yes, sir, I know Miss Ruby, I knew her well.

Q. Did you know a man who was in the Duval County Jail during August and September 1939, a trustee by the name of Rudolph J. Dowling?

A. Yes, sir, we called him "darling" every body used to call him that, call him "darling" he used to work at the Fruit Growers Express his self, his wife died—his first wife.

Q. During the time Mr. Dowling was trustee in the Duval County Jail did you send word by him to Mr. Joe Peterson to tell him to come down there and see you, and please bring something that you had been keeping your mouth shut, that you hadn't told them anything, or in words something like that?

A. Yes, sir, I had known him before I had got in jail and I knew I could trust him.

(Signed) James Baker, Affiant.

Sworn to and subscribed before me this 7th day of April, A. D. 1941. (Signed) H. M. Richards, Notary Public, State of Florida at Large. My commission expires January 10, 1944. (Seal.)

[fol. 14] EXHIBIT "B" TO PETITION

Raiford, Florida,
April 8, 1941.

This conference with JAMES BAKER was held in the Flat Top in Raiford in the afternoon of April 8th, 1941 between 6:00 and 7:00 P. M,

James Baker Questioned.

By Mr. Crews:

Q. Baker, when you was arrested, where did they first take you?

A. To police station.

Q. In Jacksonville?

A. Yes, sir.

Q. How long did they keep you there?

A. Around four or five hours, I arrested—I stayed there until around 3:00 o'clock the next day in the afternoon.

Q. The officers brought you to Raiford?

A. Yes, sir.

Q. You recall what officers brought you over here?

A. Mr. Gene Griffen and Mr. Dick Barker and some more officers.

Q. Now what threats or promises did they make you to testify and implicate Clyde Hysler?

A. Well, Mr. Griffen and them didn't, they didn't make no promises, Mr. Hulbert did talk to me, that he would get me life imprisonment—life instead of the chair.

Q. Mr. Hubbert talked to you and made promises that you would get life instead of the chair?

A. Yes, sir.

Q. What police——

A. That's what it was, police officers and John Harrell.

Q. John W. Harrell, the State's Attorney at that time?

A. Yes, sir.

Q. Did Mr. Harrell tell you that he would help you get a life sentence if you would testify against Clyde Hysler?

A. He said he wouldn't burn me, that he, Mr. Acosta and Mr. Carson would get me out in three years time.

Q. Was Detective Cannon and—you was talking about and Inspector Acosta——

A. The two men that arrested me, yes sir.

[fol. 15] Q. Now from the time you was arrested, Baker, how long was you kept to yourself before you was allowed to talk to your lawyer or your friends?

A. From the time I was arrested until the 21st of January, till we went back and had my trial set.

Q. The day you were arraigned in Circuit Court for the trial?

A. Yes, sir.

Q. You was held to your self without being allowed to communicate with any of your friends or your lawyer?

A. Yes, sir.

Q. When was you arrested?

A. It was on the 23rd—24—26— when was Thanksgiving Day—just a few days.

Q. You was arrested just a few days after Thanksgiving?

A. Yes, sir.

Q. And you were not allowed to see any lawyer or friends until the 21st of January?

A. They gave orders not to let any one see me or any one talk to me, they gave them orders her (turning and talking to Captain, "you wasn't here was you Captain?". (The Captain answering no) it was Captain Ormond.

Q. Did any of those officers threaten you?

A. They carried me in a dark room——

Q. That was here?

A. No, sir, that was in Jacksonville, they carried me out to Mareitta and whipped me.

Q. What was that with?

A. Something covered up in canvas, I don't know what it was and a piece of hose and something looked like a pine limb.

Q. You remember any of those names?

A. Yes, sir.

Q. Who were they?

A. Mr. Woods, R. L. Woods, and Mr. Carson slapped me two or three times and gave them the black jack to beat me with and three pimps.

Q. That was in the presence of Mr. Woods, Carson and Acosta?

[fol. 16] A. Yes, sir.

Q. That was to try to make you implicate Mr. Hysler in the robbery of Mr. Surrency and Mrs. Surrency?

A. Yes, sir.

Q. And if it hadn't been for the beatings and threats and the promises to get you out of here in three years as you have stated above would you have implicated Mr. Hysler in the case at all?

A. No, sir, cause I told them I didn't no anything about it; and another thing, between Mr. Hysler's first trial and last one, Mr. Harrell came down to the County Jail after I was allowed to see people, I said, don't you know that if you burn Mr. Hysler you will have to burn me too, and he said he could burn the whole Hysler family and don't burn me cause he and Mr. Sidney Hulbert, Mr. Carson and Mr. Cannon and some more officers was going to run the County as long as they were running it.

Q. And now that was between the first trial of Clyde Hyslers and the second trial when he was convicted?

A. Yes, sir.

Q. How long after Clyde Hysler was tried the last time before you was tried?

A. I can't tell you how long that was—I went to Court on the 6th of December 1938-38—no 37.

Q. In other words you were never tried until Mr. Hysler was tried the second time.

A. The second time.

Q. How long was it after you and Tyler testified against Hysler in the second trial before you and Tyler run out of jail in that jail break?

A. About a week.

Q. Did Alvin Tyler testify in both of the trials against Clyde Hysler?

A. He did.

Q. A large number of prisoners escaped from the jail with you and Tyler?

A. 18 of us.

[fol. 17] Q. Was not that escape made during the time when the Duval County Jail was going under some repairs and remodeling?

A. Yes, sir.

Q. Then it was not just a matter of some one helping you and Tyler out of jail, it was just a general jail break?

A. Just a general jail break.

Q. Did you and Clyde Hysler when this occurred have some liquor dealings on?

A. No, sir.

Q. Did you and Tyler take this car at the time these folks were killed——

A. That I don't know—know how Tyler got the car, he had the car.

Q. Tyler was also the man that had the pistol and he was also the man who done the shooting?

A. Yes, sir.

Q. And was Tyler the man who had the pistol after the shooting was over?

A. Yes, sir.

Q. You didn't have it?

A. No, sir.

Q. You didn't pawn it?

A. No, sir, he had the pistol, I don't know what he had did with it.

Q. Baker, how many times did the officers threaten you and beat you after you were arrested?

A. They beat me about three o'clock in the morning to ten o'clock before they got me to say anything.

Q. It was the police made you tell the sheriff's office?

A. Yes, sir.

Q. Was you afraid not to tell them what they wanted you to, afraid they would beat you some more?

A. Yes, sir, if them—I said two words they would slap me, before the sheriff bunch got there they had sent out and bought me dinner, give me $5.00 or $6.00 dollars in money, and said don't tell any body about me being whipped, if anyone asked me, tell them no.

[fol. 18] Q. Then it was a definite promise from Mr. Harrell, the State's Attorney to keep you from burning?

A. He said that he would see that I would get life, but that he would see that I didn't stay at the chain gang but three years.

Q. You say he played off sick to keep from prosecuting you?

A. Yes, sir, Mr. Simpson his assistant and Mr. Hallows prosecuting, the Judge had ordered him to handle the Hysler case straight through, cause Mr. Hollows was not familiar with the case.

Q. Do you know whether or not Mr. Harrell had gone out of office and Mr. Hallows had taken office?

A. Yes, sir, I think he had and that was why the Judge wanted him to carry this thing on through, but I don't be sure.

Q. Is there anything else you want to say along that line about those threats or beatings?

A. No, sir, that is all I can think of right now.

(Signed) James Baker, Affiant. (Seal.)

Sworn to and subscribed before me this 8th day of April, A. D. 1941. (Signed) H. M. Richards, Notary Public, State of Florida. My Commission expires January 10, 1944.

[fol. 19] EXHIBIT "C" TO PETITION

Raiford, Florida,
April 8, 1941.

Further statements made at Raiford, April 8th, 1941, between 8:30 and 9:00 P. M. in the presence of Mr. Prince, Mr. Richard, Mike Jones and Mr. Crews.

Baker questioned by Mr. Crews:

Q. Baker what about the remarks you wanted to make?

A. Where they kicked me.

Q. That at Jacksonville police station?

A. Yes, sir.

Q. Who was that?

A. Mr. Carson, thats who had me at that time, he taken me down there where a bunch of police was shooting pool.

Q. What all did they do to you?

A. Those officers down there asked him if he made me tell him what they wanted to know, and Mr. Carson—Mr. Carson said not yet, and they said, turn him loose with us about 25 minutes and we will make him say anythi , they wanted me to say, and he told them to take me and hold me until they went up into the office and make a call, and while he was gone to make a call they carried me back into a room and put a coat over my head and went to beating me, I got scars on me now, I want to show them to you and its what you call risons, you can get your doctor and he will tell you what was caused from blows——

Q. You still have scars on you from that beating?

A. Yes——

Q. Was those beatings that caused those scars on you to tell on Clyde Hysler?

A. To make me tell anything.

Q. Did they mention Clyde Hysler's name to you while they were beating you?

A. Yes, sir.

Q. Do you know the names of those officers?

A. No, sir, those were new officers to me, they were speed cops, had those things on their shoulders.

Q. Did any of them tell you that Clyde Hysler was mixed [fol. 20] up in the killing or such as that?

A. They said they knew he was in it—and after I told how it was they made me implicate him.

Q. Implicate him?

A. Yes, sir.

Q. As a matter of fact, Hysler was not mixed in it but it was Joe Peterson——

A. They had me hand cuffed behind my back and I was chained and beat me, that was the pimps, Algie and I don't know the others name.

Q. That was Algie?

A. Yes, sir,—and if I had not went out there with intent to rob those people I wouldn't mind going on dieing for it, but I was forced to go out there and me and Mr. Clyde both are going to have to die Monday for something we are not guilty of, although I was out there, but what make me out there, any one man would have went.

Q. Was it because of those threats of Joe Petersons that you already made, caused you to go out there, scared he would kill you?

A. Yes, sir, he had threatened me, and had a man shadow me three days—and Alvin Tyler had a gun.

Q. Baker do you know whether or not Mr. Harrell knew if you was beat up to make you testify?

A. Yes, sir, he knows I couldn't set down, none of the sheriff's force knew it at the time, they knew it later when I made it in front all of the officers.

Q. When you made that statement you couldn't set down.

A. Yes, sir, and I can't set down good, and I wish you and those men could see that now.

Q. No, we want care to see—that's all you want to say.

A. (Baker nodding his head indicating yes.)

(Signed) James Baker, Affiant.

Sworn to and subscribed before me this 9th day of April, A. D. 1941. (Signed) H. M. Richards, Notary Public, State of Florida. (Seal.) My commission expires January 10, 1944.

[fol. 21] (Photostatic Copy)

EXHIBIT "D" TO PETITION

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Ed. Mosley who, first being duly sworn, deposes and says:

That his name is Ed. Mosley, that he is a resident of 711 Edison Avenue, Jacksonville, Duval County, Florida, that he has been a resident of Duval County all of his life and that he is twenty-five years of age; that three or four days prior to the killing of the Surrenceys that he was over to

his aunt's house, Mrs. Ruby Taylor over on McDuff Avenue, Jacksonville, Florida and Joe Peterson and he was out in the back yard talking a civil conversation, and Joe Peterson asked him if he wanted to make a little money easy and he told him it was according to what it was and how it was to be made, and he put the proposition to him as follows:

"He, Joe Peterson told me that a man went to get a bunch of Fruit Growers Express checks cashed and all I had to do was to stop them along the road with a pistol and take the money and go on along about my business; that the old man didn't carry any pistol to get the checks cashed', and I told him, "I didn't think I wanted to do that" and three or four days later I heard about the Surreneys being killed that runs a Fruit Growers Express Restaurant. They were killed three or four days after Joe Peterson talked to me, by the negroes Baker and Tyler at Grand Crossing, Duval County, Florida.

(Signed) Ed. Mosley.

Sworn to and subscribed before me this 8 day of March, A. D. 1941. Carmen Octogus, Notary Public, State of Florida at Large. (Seal.) My commission expires, June 3, A. D. 1943.

[fol. 22] (Photostatic copy)

EXHIBIT "E" TO PETITION

STATE OF FLORIDA,
County of Duval:

Personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, A. J. Mooney, who after being first duly sworn, deposes and says:

That during October or November 1939 Randolph Dowling came to me a few days after he had been serving time in the County Jail and we just happened to be talking and he told me, "you go by Joe Petersons every day, you tell him that that negro Baker said for him to bring him something, that his wife had died and that he had no one to bring him anything and for him to send something, that he (Baker) was keeping his mouth shut'.

I stopped and seen Joe and Joe said, 'I will send him something or go see him because I am the cause of all of it; then I left right then.

I am running the same restaurant that Mr. Surrency was running when he was killed, there at the Fruit Growers Express and this coming August will be three years that I have been operating the same rest-urant.

(Signed) A. J. Mooney.

Sworn to and subscribed before me this 28th day of March, A. D. 1941. (Signed) Carmen Octogus, Notary Public, State of Florida at Large. (Seal.) My commission expires June 3, A. D. 1943.

[fol. 23] (Photostatic Copy)

EXHIBIT "F" TO PETITION

Statements of Mrs. Ruby Crews, 2410 McQuade Street, Jacksonville, Florida

STATE OF FLORIDA,
County of Duval:

Personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Mrs. Ruby Crews, who after being duly sworn deposes and says:

I have known Joe Peterson, Sr. for many years, practically all of my life, every since I was a little girl and for several years prior to his death we were intimate friends, and from time to time we would talk about the Clyde Hysler case and he has told me several times that he was responsible for the whole thing and that he was the cause of it all, speaking about the death of Mr. and Mrs. Surrancy, and he has told me many times how sorry he was that the whole thing had happened. The statements were made at different times since the death of the Surrancys. The last time he talked to me about the Hysler case and made the statements was on Saturday night before Christmas 1939, Mr. Peterson died in February 1940, the statements were made at my house on McQuade Street here in Jacksonville.

(Signed) Ruby Crews.

Sworn to and subscribed before me this 29th day of March A. D. 1941. (Signed) Carmen Octogus. Notary Public, State of Florida at Large. (Seal.) My commission expires June 3, A. D. 1943.

[fol. 24] (From Photostatic Copy)

EXHIBIT "G" TO PETITION

Fort Pierce, Florida,
March 30th, 1941.

During the months of August and September, until September 13th 1939 I was a trusty in the Duval County Jail, during which time the negro Baker was in there on the Surrency Killing; during the latter part of my time there I was talking with Baker in his cell during feed time and Baker told me that he could trust me because I had known him before he got into this trouble and he told me "you know Mr. Joe" and I said you mean Joe Peterson Sr. and he said "Yes" and then he told me that he wanted me to go to Mr. Joe Peterson and tell him that his people had thrown him down and that none of them would come down to see him and bring him anything and for me to when I got out, to go to Mr. Joe Peterson and tell him "that he wanted him to come down and bring him something; that he had no one to do anything for him and for him to come down to the Duval County Jail and bring him something." Then Baker waited for a few seconds and then he looked at me and said I can trust you and I want you to tell Mr. Joe that I have been keeping my mouth shut; that I haven't told them anything and he will know what I mean."

After I got out of jail on September 13th, 1939 I happened to see Mr. Mooney who runs the Fruit Growers Express Restaurant and I knew that he saw Joe Peterson every day and told him what Baker had said and ask him to tell Peterson about it whether he ever told Peterson about it or not I do not know.

(Signed) Rudolph J. Dowling.

Sworn to and subscribed before me this 30th day of March, 1941. (Signed) J. M. Weed, Notary Public State of Florida. My commission expires Nov. 25, 1944. (Seal.)

[fol. 25] EXHIBIT "H" TO PETITION

STATE OF FLORIDA,
County of Duval:

Before me the undersigned authority, personally appeared H. L. Anderson and W. J. Sears, Jr. to me, well known, who being duly sworn deposes and says:

That affiants are attorneys at law, practicing in the City of Jacksonville, Florida; that affiants represented Clyde Hysler, as his attorneys, in the trial of two (2) cases in Duval County, Florida, wherein said Hysler was charged, in the first case tried, with the murder of John H. Surrency, and in the second case tried, the case of Mamnie Surrency; that affiants have read the above foregoing affidavits of James Baker and know the contents thereof; that the matters, and statements set forth in said affidavits were unknown to affiants prior to, and during the trial of said case and in truth, the contents in said affidavits were first known to affiants on the 8th and 9th day of April 1941, when said affidavits were first read by affiants; that affiants exercised all reasonable care and diligence in an attempt to ascertain all matters of fact in relation to said cases from the time affiants were employed to represent said Hysler until the termination of the trial of said cases; that in the exercise of such diligence and care, affiants made requests of the Circuit Judge, Duval County, Florida, to see and talk with state's witnesses, James Baker and Alvin Tyler prior to said trial; that in accordance with instructions given by said Judge, affiants went to the State Prison Farm, Raiford, Florida, to see said witnesses, and was accompanied on said trip by John E. Mathews, Court Appointed attorney for James Baker and Charles Cook Howell, Court appointed attorney for Alvin Tyler; that at said time said witnesses were questioned at great length by affiants, and said witnesses were particularly questioned as to who was involved in said case, and said witnesses denied that any one was involved in said case other than the defendants named in the indictment; that said witnesses further denied that any statements previously made by them to law enforcement officers were made under duress or with any hope or expectation of reward.

[fol. 26] (Signed) W. J. Sears, Jr., H. L. Anderson,
Affiants.

Sworn to and subscribed before me this 9th day of April, A. D. 1941. (Signed) Carmen Octojus, Notary Public, State of Florida at large. My commission expires June 3, A. D. 1943. (Seal.)

[fols. 27-28] EXHIBIT "I" TO PETITION

—and the law said that the Hyslers got out of every trap that they had set for them but this time I know we got one of them and Mr. Sid say yes and we must get this one clen out of the world in stead of just getting hem out of cisity. And if we do he says we would weaken the Hysler. then Mr. J. A. Harrell said to Alaek Tyler Tyler how do you feel do you think you got a chance? Tyler sid No sid I dont, then Mr. Harrel said no Tyler you and Clyde is sure to buren and I dont see any way of saving you because you don the killing, but I will asure you that as long as you are alive you will never want any thing then he I meen ino the line of money, then Mr. Harrel opend his little wallet and gave Tyler som money just how much I dont know than Mr. Harrel said to me I will give you a start when you get out of prison then I said you are not giving no wooden nickles are you? then he say no I sayed I feel like you will hafter put me in that ole chair if you buren clyd. Mr. Harell again I could buren the whole Hysler family and dont buren you and all i want you to do that do what I say do and I will show you.

(Signed) James Baker.

Raiford, Union County, Florida.

Sworn to and subscribed before me this 9th day of April, A. D. 1941. (Signed) H. M. Richards, Notary Public, State of Florida at Large. My commission expires Jan. 10, 1944. (Seal.)

[File endorsement omitted.]

[fol. 29] IN SUPREME COURT OF FLORIDA

[Title omitted]

BRIEF IN SUPPORT OF PETITION OF PLAINTIFF IN ERROR FOR PERMISSION TO FILE PETITION FOR WRIT OF ERROR CORAM NOBIS—Filed April 10, 1941

Question

Should the Plaintiff-in-error be granted leave to file a petition for Writ of Error Coram Nobis in the Lower Court

where his motion sets up that he was convicted of murder in the first degree and sentenced to be executed on the testimony of two witnesses who connected him with the crime and since the judgment of the Lower Court has been affirmed both as to the Plaintiff-in-error and one of the two witnesses, one of said witnesses being under indictment and not tried, commutation of said death sentence as to both the Plaintiff-in-error and the other witness being denied, and then the Plaintiff-in-error learns that the convicted witness was coerced to testify that the Plaintiff-in-error participated in said murder and also said witness was promised a reward, in that, the prosecuting officers promised said witness that if he would implicate the Plaintiff-in-error and testify against him that they would see that he only received a life sentence and that such prosecuting officers would get the said witness a pardon after three years; and said witness now being willing and will testify at a new trial that he and the other witness agreed to "frame" the Plaintiff-in-error and that the Plaintiff-in-error had no part in said murder for which he now stands convicted, and that both of the witnesses who implicated and testified against the Plaintiff-in-error did so under duress and in an attempt to escape punishment themselves and on the promise of the prosecuting officers as set out?

[fol. 30] We say that the motion should be granted.

Statement

Clyde Hysler was convicted and sentenced in Duval County, Florida for murder in the first degree, without recommendation for mercy. He appealed to the Supreme Court of Florida, and his conviction was upheld.

Joinly indicted with Hysler were two negro-s, Alvin Tyler and James Baker, both of whom testified at the trial of Hysler and it was solely upon their testimony that Hysler was convicted. After Hysler was convicted James Baker was tried and convicted, and sentenced to the death penalty, Baker appealed his conviction which was affirmed, Taylor has never been tried.

Hysler and Baker applied to the pardon board to have their sentence commuted to life imprisonment which was denied.

After the date had been set for the execution of both Hysler and Baker, Baker requested the attorney for Hysler to come to see him. In the presence of prison officials, spon-

taneously, without prompting, freely and voluntarily, Baker retracted his testimony given at the trial and explained that one Joe Peterson, Sr., and not Hysler was the person who planned the robbery that resulted in the murder charge. That Baker and Tyler agreed to put the blame on Hysler because of the reputation of the Hysler family and because they believed that the father of Hysler had plenty of money to get Hysler off and if Hysler got off they would get off. That after the arrest of Baker and Tyler, the prosecuting officers beat the said Baker in an attempt to force Baker to implicate Hysler. That he, Baker, at first refused to make any statement but after threats from the law enforcement officers and a promise from the state attorney, that if he would implicate Hysler and testify against him that he would see that Baker would receive a life sentence for his part in the murder and that after Baker had served three years the state attorney would get a pardon for Baker, he implicated Hysler. Baker made affidavits to this affect and also that both he and Tyler believed that when they implicated Hysler and testified against him they [fol. 31] would escape the death penalty. Baker now realizing that he has done Hysler an injustice and is going to die, desires to remedy the wrong done to Hysler, because of the duress and hope of reward coming from the law enforcement officers and the prosecuting officers. None of the facts upon which the motion for lease to file a petition for Writ of Error Coram Nobis were known to Hysler until after the Pardon board had rejected Baker's application for clemency. The attorney's for Hysler attempted to confer with both Baker and Tyler before the trial but were only permitted to talk to such witnesses after and order from the Circuit Court of Duval County, Florida, and then in the presence of the attorneys appointed to defend Baker and Tyler. That if the foregoing matters and things had been known to the Court at the time of Hysler's conviction and sentence a different judgment and sentence would have been entered in said cause, to wit; a judgment in favor of Hysler. All of the facts relied upon by Hysler as to why this Court should grant him leave to file a petition for Writ of Error Coram Nobis are set out in his motion, with supporting affidavits.

Argument. Question

Should the Plaintiff-in-error be granted leave to file a petition for Writ of Error Coram Nobis in the Lower Court

where his motion sets up that he was convicted of murder in the first degree and sentenced to be executed on the testimony of two witnesses who connected him with the crime and since the judgment of the Lower Court has been affirmed both as to the Plaintiff-in-error and one of the two witnesses, one of said witnesses being under indictment and not tried, commutation of said death sentence as to both the Plaintiff-in-error and the other witness being denied, and then the Plaintiff-in-error learns that the convicted witness was coerced to testify that the Plaintiff-in-error participated in said murder and also said witness was promised a reward, in that, the prosecuting officers promised said witness that if he would implicate the Plaintiff-in-error and testify against him that they would see that he only received a life sentence and that such prosecuting officers would get the said witness a pardon after three [fol. 32] years; and said witness now being willing and will testify at a new trial that he and the other witness agreed to "frame" the plaintiff-in-error and that the Plaintiff-in-error had no part in said murder for which he now stands convicted, and that both of the witnesses who implicated and testified against the Plaintiff-in-error did so under duress and in an attempt to escape punishment themselves and on the promise of the prosecuting officers as set out?

The motion for leave to file a petition for Writ of Error Coram Nobis was taken from the motion filed in the case of Lamb v. State, 91 Fla. 396, 107 So. 535, with additional facts set forth.

The Lamb case, supra, lays down the proposition of law that a Writ of Error Coram Nobis will not be granted because a witness committed perjury at the trial, unless it was committed under duress or for the hope of reward, when the Court said a Writ of Error Coram Nobis would be granted, "Where a plea of guilty was entered because of mob violence.

Nickels v. State, 98 So. 497, 502, 99 So. 121 86 Fla. 298."

On authority of the Lamb case, supra, this motion should be granted.

The motion in the Lamb case is set out in Carsons Florida Common Law Pleading. First Edition, page 211.

We call the attention of the Court to the case of Washington v. State, 92 Fla. 740, 110 So. 259, which case leave was granted to file a petition for Writ of Error Coram Nobis because the motion followed closely the motion in the Lamb

case, supra, The Washington case held that Coram Nobis could be granted even though the Judgment had become final due to the fact that a term of the Supreme Court had elapsed. We call the Court's attention to part of the opinion in the Washington case;

However, in view of the fact that the application now before us follows quite closely the allegations of the petition quoted in the Lamb case, supra, and was evidently based upon such case, and in view of the further fact that the date of the execution of the petitioner is so near at hand that to require him to amend his petition at this time might prove fatal both to the petitioner and to the remedy which he seeks to employ, if he be entitled to it, the court will not at this time require such amendment. It seems [fol. 33] to us that the conduct of the State Attorney and the prosecuting officers in the prosecution's of the cause in the Lower Court was characterized by such dominating fraud upon the Court in the suppression of evidence as to affect the judgment of the Court and impair the inherent qualities of accuracy and fairness.

We call the Court's attention to the case of Pike v. State 103 Fla. 594, 139 So. 196, wherein the Court granted leave to file the petition in the Lower Court and afterwards the Lower Court denied the petition on the facts, sustained the Lower Court.

From the opinion:

In April, 1931, Pike applied to this court by petition for leave to apply to the trial judge, Hon. J. C. B. Koonce, for a writ of error coram nobis, and the petition was granted. The judge denied the writ. To that judgment, as hereinbefore stated, the case is here on writ of error.

The contention was made that certain facts, "which would have afforded an effective and complete defense" to the charge against Pike, were not discovered, ascertained, or made known to the court, the defendant, or his counsel, because of duress and unlawful means actually exerted by the prosecution in the trial court to prevent such discovery in due season to be available as a defense and to prevent the rendering of the final judgment.

The question presented by the record, the affirmative or negative answer to which would determine whether the judgment of the court in denying the writ should be affirmed or reversed, is: Was the conduct of the state attorney in

the prosecution of the cause characterized by such dominating fraud upon the court in the suppression of evidence as to affect the judgment of the court and impair the inherent qualities of accuracy and fairness. The basis of the petition in the Pike case, supra, was that the State Attorney concealed from the accused the fact that there was a witness who would testify that the chief prosecuting witness had admitted to him that he, the prosecuting wit- [fols. 34-35] ness committed the murder and not the accused Pike. The Supreme Court of Florida granted the motion of Pike to file the petition in the Lower Court. When the Lower Court heard the case on the petition it found as a fact that there was no fraud. The State Attorney did not conform to what his duties were under the circumstances but that his conduct did not amount to fraud. In the Pike case, as in the case at bar, the facts that were concealed by the prosecuting officers and State Attorneys were conclusive to show that another committed the crime and not the accused. In the Pike case the evidence did not sustain the charge. In the case at bar we ask that the Supreme Court do as it did in the Pike case, supra, and grant to Hysler the opportunity of a hearing to prove the grounds of his motion. It seems to us that this is Hysler's right by virtue of the authority in the Pike case, supra.

It is a cardinal principle of law that justice be meted to all alike. In the case at bar the law enforcement officers and State Attorney did not give to Hysler the fair and impartial trial that all other citizens of the State of Florida are given; for which reason Hysler was denied the equal protection of the law as guaranteed to him under the 14th amendment to the United States Constitution, and in like manner was denied due process of law as guaranteed to him.

Conclusion

We respectfully submit to the Court that on authority of the Lamb case, Washington case and Pike cases, supra, the motion for leave to file the petition for Writ of Error Coram Nobis, should be granted and the execution stayed until the Lower Court has heard the petition.

Respectfully submitted, (Signed) P. Guy Crews. Attorney for Plaintiff-in-Error.

[fols. 36-37] IN SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1941

CLYDE HYSLER, Plaintiff in Error,

vs.

STATE OF FLORIDA, Defendant in Error

ORDER DENYING PETITION—April 11, 1941

Upon consideration of the Petition of Plaintiff in Error for permission to apply to the Circuit Court of Duval County Florida for Writ of Error coram nobis in this cause, it is ordered that said petition be and the same is hereby denied.

A True Copy. Test:

——— ———, Clerk Supreme Court.

[fol. 38] IN SUPREME COURT OF FLORIDA

[Title omitted]

MOTION FOR REHEARING—Filed April 12, 1941

To the Honorable Justices of said Court:

Comes Now The above named plaintiff-in-error, Clyde Hysler, by his attorney, P. Guy Crews, and respectfully shows unto the Court that a petition for permission to apply to the Circuit Court of Duval County, Florida for writ of error corum nobis was duly filed, presented and argued before this Honorable Court on Thursday the 10th day of April, A. D. 1941; that the said petition was denied by order of this Honorable Court on Friday the 11th of April, A. D. 1941, and the said petitioner now respectfully moves the court to vacate and set aside the said order denying said petition and grant to said petitioner a rehearing on said petition on the following grounds, to-wit:

First

That said petition was not heard by a full court, there being absent from the court at said hearing Justice J. B. Whitfield, Justice Alto Adams and Justice Rivers Buford;

that said petition involves the life of the petitioner, Clyde Hysler and is of grave importance and therefore should be heard by the entire court.

[fols. 39-40] Second

That the Exhibits "A", "B" and "C" attached to said petition and made a part thereof contained sworn statements and made by James Baker, co-defendant, with Hysler and a State witness who testified against Hysler and on which testimony the petitioner was convicted of murder in the First Degree; that said sworn statements of the said James Baker were made voluntarily and spontaneously and made in the nature of a dying declaration because the said witness and co-defendant was asked if he was changing his stat-ment realizing that he would likely die next week to which he answered, "Yes, but he was telling the truth", and petitioner therefore respectfully represents to the Court that said statement made in the nature of a dying declaration should be given more weight and consideration than the statement made by said witness Baker at the time of the trial when said witness had hopes of escaping the death penalty.

Third

That a writ of error coram nobis being a common law writ and not being changed specifically by Statute, there is no time limit in which said writ could be applied for in this Court.

Petitioner, therefore, respectfully moves this Honorable Court to grant to petitioner a rehearing on said petition and further moves the court to stay any further proceeding or execution of petitioner until such time as said petition can be presented to the full court.

P. Guy Crews, Attorney for Petitioner.

Duly sworn to by P. Guy Crews. Jurat omitted in printing.

[fols. 41-42] In Supreme Court of Florida

[Title omitted]

Order Denying Motion for Rehearing—April 12, 1941

Upon consideration of the Motion of Counsel for Plaintiff in Error for a rehearing on Plaintiff in Error's petition

for leave to apply to the lower court for Writ of Error Coram Nobis, it is ordered that said Motion be and the same is hereby denied.

A True Copy. Test:

——— ———, Clerk Supreme Court.

[fol. 43] IN SUPREME COURT OF FLORIDA

[Title omitted]

PETITION FOR STAY ORDER PENDING APPLICATION FOR WRIT OF CERTIORARI TO UNITED STATES SUPREME COURT—Filed April 12, 1941

Comes now the Plaintiff-in-error and respectfully petitions this Honorable Court for the entry of a stay order, to stay the execution and judgment in the above entitled cause, in order to perfect a petition for Writ of Certiorari to the United States, on the following grounds:

1. That the Plaintiff-in-error desires to prepare and intends to present to the United States Supreme Court his petition for Writ of Certiorari to the order of the Supreme Court of Florida, denying the motion of the Plaintiff-in-error for leave to file in the Circuit Court in and for Duval County, Florida, a petition for Writ of Error Coram Nobis.

2. That the execution of the Plaintiff-in-error is set for the week beginning Monday, April 14th, 1941, and unless the Honorable Court enters its order staying the judgment in the above styled cause it will be impossible for the Plaintiff-in-error to seek redress in the Supreme Court of the United States.

3. That the Plaintiff-in-error desires to have the United States Supreme Court to review the question of whether this Plaintiff-in-error received the equal protection of the law as guaranteed to him under the 14th amendment to the United States at his trial in the lower Court, in view of the matters and things set forth in the motion of the Plaintiff in error for leave to file a petition for Writ of Error Coram [fols. 44-45] Nobis in the Circuit Court of Duval County, Florida.

4. That the Plaintiff-in-error has good basis to petition the Supreme Court of the United States for a Writ of Certiorari, from the order of the Supreme Court of Florida denying the motion of the Plaintiff-in-error for leave to file a petition for Writ of Error Coram Nobis in the Circuit Court of Duval County, Florida, and respectfully suggests to the Court that in and by their order denying the motion of the Plaintiff-in-error for leave to file a petition for a Writ of Error Coram Nobis in the Circuit Court of Duval County, Florida, the Plaintiff-in-error is being deprived of the rights guaranteed to him under the provision of the 14th amendment to the United States Constitution, and is being denied due process of law a- guaranteed to him under the 5th amendment to the United States Constitution.

Wherefore the Plaintiff-in-error respectfully petitions the Court for the entry of a stay order, staying the execution and judgment entered in the above styled cause for a reasonable length of time to permit the plaintiff-in-error to file a petition for Writ of Certiorari in the Supreme Court of the United States.

Respectfully submitted, P. Guy Crews, Attorney for Plaintiff-in-error.

Duly sworn to by P. Guy Crews. Jurat omitted in printing.

[fols. 46-47] IN SUPREME COURT OF FLORIDA

[Title omitted]

ORDER DENYING PETITION FOR STAY ORDER—April 12, 1941

Upon consideration of the petition of plaintiff in error for an order staying the execution and judgment entered in the above styled cause for a reasonable length of time to permit plaintiff in error to file a petition for Writ of Certiorari in the Supreme Court of the United States, it is ordered that said Petition be and it is hereby denied.

A True Copy. Test:

——— ———, Clerk Supreme Court.

[fol. 48] IN SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1941

En Banc.

CLYDE HYSLER, Plaintiff in Error,

vs.

STATE OF FLORIDA, Defendant in Error

A Writ of Error from the Circuit Court for Duval County, Bayard B. Shields, Judge.

P. Guy Crews, for Plaintiff in Error.

George Couper Gibbs, Attorney General and Nathan Cockrell, Assistant Attorney General, for Defendant in Error.

OPINION ON MOTION FOR REHEARING—Filed April 14, 1941

BUFORD, J.:

On motion for rehearing on application for an order for leave to apply to the Circuit Court of Duval County for a writ of error coram nobis to review the judgment of conviction of petitioner of the offense of Murder in the First Degree heretofore entered in that Court, on grounds stated in the petition, we have denied the petition for reasons as follows:

(a) This Court may take judicial cognizance of its own records and the record lodged in this Court on the writ of error to the judgment of conviction of the petitioner shows ample evidence to support the judgment of conviction without the aid of the testimony given on that trial by the witness James Baker.

(b) Writ of error coram nobis will not lie because of false testimony given at the trial by important witness. Lamb v. [fol. 49] State, 91 Fla. 396, 107 Sou. 535.

(c) Matters properly presentable for writ of coram nobis are such as would have prevented conviction and not such as may have caused a different result. Chesser v. State, 92 Fla. 754, 109 Sou. 906.

(d) If witness Baker swore falsely at defendant's trial, that fact was known to petitioner at the time of the trial. Washington v. State, 95 Fla. 289, 116 Sou. 470; Pike vs. State, 103 Fla. 594, 139 Sou. 196.

(e) The allegations of the petition do not show that the prosecuting attorney had any guilty knowledge of the alleged maltreatment of the witness, or that the alleged falsity

of the testimony of the witness Baker was known to the prosecuting officer.

(f) The petition does not show that any alleged mal-treatment of witness was inflicted by any officer of the trial court or that same was known to any officer of the trial court.

(g) The records of this Court, of which we take judicial cognizance, show that petitioner was convicted on trial held subsequent to the trial and confiction of the witness Baker of the offense of Murder in the first degree without recommendation to mercy, and that both trials were conducted on behalf of each defendant by able, diligent and faithful counsel.

(h) If all petitioner alleges in his petition had been true and had been fully made known to the trial court and to the jury which tried the defendant-petitioner, it would not have precluded the entry of the judgment upon a verdict of guilty of Murder in the first degree having been returned by the jury.

So it is, the petition is insufficient to require us to grant same and for such reasons the same was denied and the petition for rehearing is likewise denied.

[fol. 50] So ordered.

Terrell, J. Thomas and Chapman, J. J. Concur.

Brown, C. J. Dissents.

[fol. 51] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 52] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 2, 1941

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis. Enter Clyde Hysler, pro se. File No. 45,357. Florida, Supreme Court. Term No. 64. Clyde Hysler, Petitioner, vs. The State of Florida. Petition for a writ of certiorari and exhibit thereto. Filed May 1, 1941. Term No. 64, O. T. 1941.